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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re J.Y., a Person Coming Under The
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.Y.,

Defendant and Appellant.

F055874

(Super. Ct. No. JJD061625)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Valeriano Saucedo, Commissioner.

Betsy S. Kimball, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Lloyd G. Carter and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Vartabedian, A.P.J., Wiseman, J., and Dawson, J.

INTRODUCTION

On December 20, 2007, a petition was filed pursuant to Welfare and Institutions Code section 602 alleging appellant, J.Y., committed a misdemeanor by committing a battery on a police officer in the performance of his duties (Pen. Code, § 243, subd. (b)).¹ On December 21, 2007, the court found a prima facie showing was made that appellant's disposition would be by section 602 and appellant was ordered on home supervision.

Two other minors, including M.V., were involved in the incident. M.V. brought a discovery motion for police records pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). On January 14, 2008, the juvenile court conducted an in camera review of the records of Porterville Police Officers Lientz, Barteau, Rodriquez, and Powers. At the conclusion of the hearing, the court ordered that contact information be disclosed from prior incidents as to two officers. The court found no incidents involving the other two officers and ordered the transcript of the proceedings sealed.

On January 17, 2008, appellant filed her own *Pitchess* motion. On January 23, 2008, the juvenile court indicated to appellant's counsel that it had conducted an exhaustive review of the relevant police records during its in camera review on M.V.'s *Pitchess* motion. The court explained it did not intend to go through all of the police records a second time unless there had been a further complaint. The court ordered that appellant receive the same disclosure of relevant information that M.V. was provided at the earlier hearing. Appellant's counsel agreed to this procedure.

Appellant failed to appear for a readiness conference on May 12, 2008, and a bench warrant was issued for her arrest. On May 15, 2008, an amended petition was filed alleging that appellant feloniously received stolen property (Pen. Code, § 496, subd. (a),

¹ Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code.

count one) and feloniously carried a dirk or dagger (Pen. Code, § 12020, subd. (a)(4), count two). The amended petition set forth appellant's battery of the police officer in December 2007 as count three.

The jurisdictional hearing was conducted on June 6 and 11, 2008. The juvenile court first heard evidence on count three. The court sustained the petition on count three. Appellant did not contest count two, which the court found true. The court granted a motion to dismiss count one pursuant to section 701.1.

At the disposition hearing on June 25, 2008, the juvenile court found the total aggregated term on all petitions to be three years four months with eighteen days of custody credit. The court placed appellant on probation, released her to her mother's custody, and placed appellant on electronic monitoring.

Appellant seeks appellate review of the juvenile court's review of police records pursuant to *Pitchess*. Appellant contends the juvenile court erred in making a finding concerning her maximum term of confinement and failed to grant all of her custody credits.

FACTS

December 19, 2007 Incident

On December 19, 2007, Officer Dominic Bateau was dispatched to assist Officer Michelle Powers with two suspects who were fleeing. Powers and Officer Lientz were struggling with appellant. Bateau assisted them in putting appellant, who was handcuffed, into the back seat of a patrol car. Appellant was yelling profanities and not being compliant. As Bateau leaned over to buckle appellant's seat belt, she spit into his eyes.

Lientz testified that the incident with appellant occurred about 3:15 a.m. Appellant and another juvenile were sitting on the curb when M.V. approached, gesturing and speaking in a hostile manner. M.V. kept approaching despite Lientz's orders for him

to back away. Lientz put up his hand to block M.V. who proceeded to push Lientz's hand away. Believing M.V. was about to hit him, Lientz tried to subdue M.V., who swore and resisted arrest. Appellant was also cussing and calling the officers names. Lientz saw appellant spit into Bateau's face.

May 13, 2008 Incident

On May 13, 2008, Officer Carl Jordan was on duty at 3:00 p.m. as a school resources officer at Porterville High School. Jordan saw appellant and two others on the sidewalk dressed almost completely in the Norteño gang color, red. Jordan, concerned they may have been present to engage in a fight, pulled into a nearby parking lot. Appellant and the others took off running. After multiple verbal commands to stop, the juveniles eventually stopped. Jordan detained appellant, arrested her, and transported her to the police station. A female officer searched appellant and found a large kitchen knife on her.

PITCHESS REVIEW

Appellant asks this court to independently review the transcript of the in camera *Pitchess* proceeding and the material and documents submitted to the juvenile court to determine whether all potentially relevant documents were appropriately disclosed to the juvenile court for its review.

The statutory scheme for *Pitchess* motions is contained in Evidence Code sections 1043 through 1047 and Penal Code sections 832.5, 832.7, and 832.8. When a defendant seeks discovery from a peace officer's personnel records, he or she must file a written motion that satisfies certain prerequisites and makes a preliminary showing of good cause. If the trial court determines that good cause has been established, the custodian of records brings to court all documents that are "'potentially relevant' to the defendant's motion." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226 (*Mooc*).) The trial court examines these documents in camera and, subject to certain limitations, discloses to the

defendant “such information [that] is relevant to the subject matter involved in the pending litigation.’ [Citation.]” (*Ibid.*) The ruling on a *Pitchess* motion is reviewed for an abuse of discretion. (*People v. Hughes* (2002) 27 Cal.4th 287, 330 (*Hughes*).)

The record in this case is adequate to permit meaningful appellate review. It contains a full transcript of the January 14, 2008, in camera *Pitchess* proceeding held in codefendant M.V.’s case and a certified copy of police records examined by the trial court. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285 (*Prince*); *Hughes, supra*, 27 Cal.4th at p. 330.)²

Having independently reviewed the transcript of the *Pitchess* proceeding and the records examined by the juvenile court and submitted under seal, we conclude that the court did not abuse its discretion in determining that some of the records were relevant to the issues presented in this case as to two officers and that there were no relevant records to disclose as to two other officers. Accordingly, we uphold the ruling on the *Pitchess* motion. (*Prince, supra*, 40 Cal.4th at p. 1286; *Hughes, supra*, 27 Cal.4th at p. 330.)

SPECIFYING MAXIMUM TERM OF CONFINEMENT

The parties concur that the juvenile court erred in specifying the maximum term of confinement because, although appellant was found to be a ward of the court, she was placed in her parents’ physical custody on electronic monitoring. We accept the concession by the respondent that the juvenile court erred and will remand for the

² Augmentation of the appellate record with the entire personnel files of the arresting officers would have been improper. In *Mooc, supra*, 26 Cal.4th 1216, our Supreme Court ruled that the appellate court erred by ordering the custodian of records to lodge with the appellate court the entire personnel file of the named officer. It explained that the appellate court “had no way to know how much of the complete file the trial court had reviewed before ruling on defendant’s *Pitchess* motion.” (*Id.* at p. 1231.) The “better solution” is to order the trial court to hold a hearing to augment the record with the evidence it considered in chambers when it ruled on the *Pitchess* motion. (*Ibid.*) Our augmentation orders complied with *Mooc*’s guidance.

juvenile court to strike its finding concerning appellant's maximum term of commitment.³

Section 726 deals with the maximum term of confinement in juvenile wardship cases. (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1187.) Subdivision (c) of section 726 (section 726(c)) requires the juvenile court to specify that the minor may not be confined for a period in excess of the maximum term of imprisonment that could be imposed on an adult convicted of the offense that brought the minor under the jurisdiction of the juvenile court. By its express terms, however, section 726(c) applies only “[i]f the minor is removed from the physical custody of his or her parent or guardian” (§ 726(c); *In re Ali A.* (2006) 139 Cal.App.4th 569, 573 (*Ali A.*); also see *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

Physical confinement is defined under the statute as “placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.” (§ 726(c).) Where, as here, a minor is not removed from the physical custody of his parents or guardian, section 726(c) does not apply and the juvenile court is not required by section 726(c) to include a maximum term of confinement in its dispositional order, and the setting of a maximum term of confinement “is of no legal effect” (*Ali A., supra*, 139 Cal.App.4th at p. 574).

CUSTODY CREDITS

Appellant contends, and respondent concedes, that the juvenile court failed to include all of her predisposition custody credits.

The court awarded appellant 18 days' credit for time served. This included five days of detention in 2007 and February 2008. The court allowed for only 13 days of

³ Respondent submits that striking the maximum term of commitment is not strictly necessary, but would not object to a remand of this case for the juvenile court to strike. We disagree, and find that remand is necessary.

detention from appellant's arrest on May 13, 2008. Appellant, however, remained in detention through June 25, 2008. This was 44 days in addition to the 5 days appellant had previously been in custody. Appellant was entitled to 49 days of custody credits.

DISPOSITION

The case is remanded to the juvenile court for it to strike the maximum confinement term it set and to recalculate appellant's custody credits. The judgment is affirmed in all other respects.